

In the Matter of Craig Rogers, Essex County
Department of Corrections
DOP Docket No. 2006-2003
(Merit System Board, decided March 22, 2006)

Craig Rogers, County Correction Officer, Essex County, Department of Corrections, represented by Ciro A. Spina, III, Esq., requests Merit System Board review of a five day suspension pursuant to N.J.A.C. 4A:2-2.2(a)4.

The record shows that a minor disciplinary action of five days suspension was served on the appellant on November 2, 2005 for failure to follow a superior's order on July 25, 2005. The appellant appealed the five day suspension to the Department of Personnel on November 23, 2005 stating that the discipline should be considered major pursuant to N.J.A.C. 4A:2-2.2(a)4 since the appellant had been demoted for a prior infraction within the same calendar year that the five day suspension had been imposed. The appellant was informed by a letter dated December 1, 2005 that the five day suspension was considered minor discipline and, as such, the Department of Personnel did not have jurisdiction.

On appeal to the Merit System Board, the appellant states he has been involuntarily demoted from Correction Sergeant to Correction Officer as of September 9, 2005. As a result of this demotion, the appellant states that the five day suspension is covered by N.J.A.C. 4A:2-2.2(a)4, in that the appellant has been suspended and/or fined more than 15 days within the 2005 calendar year.

CONCLUSION

The only issue in this matter is whether the five day suspension served on the appellant on November 2, 2005 meets the criteria for review as a major disciplinary action. N.J.A.C. 4A:2-2.2(a)4 states that major discipline shall include a suspension or fine for five working days or less where the aggregate number of days suspended or fined in any one calendar year is 15 working days or more. Disciplinary demotion is not defined in N.J.S.A. 11A or N.J.A.C. 4A as a suspension or fine. Further, the Board has not and does not consider disciplinary demotion as the equivalent of a fine or suspension; it is a separate and distinct disciplinary action. Therefore, the five day suspension served on the appellant does not meet the criteria for review established by N.J.A.C. 4A:2-2.2(a)4.

ORDER

The Merit System Board finds that the appellant has not established a basis for review of the minor discipline in question and the appeal is denied. This is the final administrative determination in this matter.